IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.99 OF 2001

IN

COMPANY PETITION NO.909 OF 1999

Percy Shiavak Mistry. ...Appellant

vs.

Bennett Coleman & Co.Ltd. ...Respondent

Mr.D.J.Khambata, Sr.Counsel with Kevik Setalvad i/b. M/s.Mulla & Mulla & CBC, for Appellant.

Mr.J.J.Bhatt, Sr.Counsel with Ms.Anjali Chandurkar, Ranjit Shetty, i/b. PDS Legal, for Respondent.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 22nd August,2007.

P.C.:-

By consent of parties, the appeal is disposed of in the following terms:-

1. On the respondent depositing, without

prejudice to its rights and contentions, an amount of Rs.25,00,000/- (Rupees Twenty Five lakhs only) with due intimation to the appellant in this Court within a period of four weeks from today, the appeal shall stand disposed of. The Company petition out of which the appeal arises is already disposed of by the learned Single Judge.

2. Within a period of four weeks from the date on which the respondent deposits the amount as directed above, the appellant shall file proceedings for executing the foreign decree to which this appeal and the petition relate. All the contentions available to both the sides are kept open to be raised before the executing Court. The executing Court shall decide the contentions on their own merits without being influenced by the judgment of the learned Single Judge which is impugned in the petition as also this order.

3. In case the appellant does not file execution as referred to above within the period mentioned above, the respondent shall be at liberty to withdraw the amount deposited by the respondent after giving notice to the appellant.

4. The amount on being deposited may be permitted to be withdrawn by the appellant on furnishing bank guarantee of a nationalised bank to the satisfaction of the Prothonotary and Senior Master of this Court and on filing an undertaking undertaking to bring back the amount, if so directed by this Court or the executing Court, and on such terms and conditions as may be directed by this Court or the executing Court.

5. The withdrawal shall be permitted within a period of six weeks from the date of deposit, but only after the appellant takes out proceedings for execution referred to above. If

the amount is not withdrawn within that period, the Prothonotary and Sr.Master of this Court shall invest the amount in fixed deposit in a nationalised bank, pending further orders from the executing Court or this Court. The disposal of the amount shall be governed by the order passed by the executing Court or this Court in case execution is not filed.

6. In case the amount is not deposited by the respondent as directed above, the appeal shall stand allowed. The order of the learned Single Judge shall stand set aside and the Company petition shall stand admitted and then the Appellant shall be at liberty to move the learned Company Judge for appropriate orders that may be necessary in view of the admission of the petition.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)